



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/154073

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 09, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 13, 2014, at Racine, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits because the mother of their children was living in the home, that was not reported and her income was not being counted for FoodShare eligibility and allotment purposes.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent 3 notices of FoodShare overpayment notice, all dated October 28, 2013, that together informed him that he had been overpaid FoodShare benefits as follows:

04/15/08 - 03/31/09      \$3550.00 (Claim # [REDACTED])  
 03/05/12 - 08/31/12      \$2162.00 (Claim# [REDACTED])  
 11/19/12 - 09/30/13      \$2914.00 (Claim # [REDACTED])

3. The reason for the alleged overissuance was that Petitioner failed to report the mother ([REDACTED]) of his children was living in the home. Her income was not counted for FoodShare eligibility and allotment purposes.
4. The agency based its decision that [REDACTED] was in the home of the following:
  - CCAP records from 2008, 2010, 2012 and 2013 that have the same address for Petitioner and [REDACTED]
  - A 2011 voluntary acknowledgement of paternity showing the same address for Petitioner and [REDACTED]
  - A 2012-2013 school year emergency contact form indicating the same address for Petitioner and [REDACTED]
  - Employment verification for Petitioner and [REDACTED] showing the same address.
  - A 2010 update of [REDACTED]'s driver's license that shows the same address as that of Petitioner.
  - A 8/25/12 Racine County Jail booking record that shows [REDACTED]'s address to be the same as Petitioner's.
  - A 9/15/12 Racine Police Dep't report that has Petitioner and [REDACTED] at the same address.
  - A 6/17/13 Racine County Sheriff's Dep't. report that has [REDACTED]'s address and is the same as Petitioner's
  - A 7/23/13 Racine County Sheriff's Dep't. report that has [REDACTED]'s address and is the same as Petitioner's.
  - A 9/24/13 Sturtevant Police Dep't report that shows [REDACTED]'s address to be the same as Petitioner's.
  - Testimony from three landlords of three different addresses during the time periods involved here that demonstrated that both Petitioner and [REDACTED] were in the same residence. One lease signed by Petitioner and [REDACTED] on 4/2/10 shows them at the same address.
5. [REDACTED]'s income was not an issue at the hearing nor was the calculation of the amount of the overpayment.
6. The record was held open to give Petitioner an opportunity to submit evince refuting the agency evidence. Nothing was received.

### **DISCUSSION**

The Federal Regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook, Appendix §7.3.2*. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the

agency. *See, 7 CFR § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. Overpayments due to “client error” may be recovered for up to six years after discovery. FoodShare Wisconsin Handbook, §7.3.2.1.*

Additionally, Federal Regulations provide, in relevant part, as follows:

- (a) Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

*7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH), § 7.3.1.1.*

Finally, also relevant here is the following as to who must be included in a FoodShare household:

### **3.3.1.3 Relationship Rules**

*7 CFR 273.1(b)(1)*

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

...

*FSH, §3.3.1.3.*

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A Petitioner must then rebut the agency’s case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The documentary record provided by the agency is laid out in the Findings at # 4 and does establish a strong case for the proposition that Petitioner and ■ were residing together. Petitioner could offer nothing other than the claim that they had not lived together since their children were born (in 2005 and 2007). I find it hard to believe that Petitioner could not provide some trace of evidence beyond his own testimony to show that the mother of their children lived anywhere but with Petitioner over the years involved here. Indeed, they have represented themselves as living together for many, if not all, purposes except for receipt of public benefits.

The preponderance of the evidence – the documentary record coupled with the credible testimony of the investigator and the landlords - demonstrates that Petitioner and ■ were residing together as alleged.

## **CONCLUSIONS OF LAW**

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged as the mother of their children was living with Petitioner during the periods of the overpayments alleged here.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

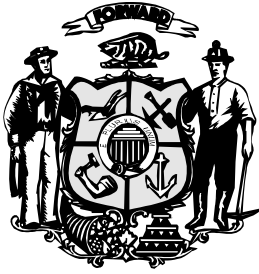
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of April, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 2, 2014.

Racine County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability